

APPEAL NO. 010060

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 6, 2000, a hearing was held. The hearing officer determined that the appellant (claimant) had not sustained an injury in the course and scope of her employment on _____; that the claimant had not reported the injury within 30 days; that the claimant had reported the injury on December 1, 1998; that the claimant did not have good cause for failing to report the injury until December 1, 1998; and that the claimant did not have disability resulting from the injury. The claimant appealed, asserting that the hearing officer had erred in not finding that the claimant had either reported the injury timely and/or did not have good cause through the time she reported her injury, and, inferentially, erred in finding that the claimant did not sustain an injury in the course and scope of her employment and in finding that the claimant did not have disability. The respondent (self-insured) responded that the hearing officer's decision and order is supported by the evidence and should be affirmed.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant testified that she believes that she sustained a low back injury (two herniated discs), while lifting boxes and moving furniture as she shut down her classroom after the summer semester. The alleged date of injury is _____. The claimant testified that she was exhausted and stiff for several days, but did not notice any low back pain or spasms until July 6, 1998, while attending a teacher's seminar. There was no allegation that attending the seminar was within the course and scope of the claimant's employment. The claimant sought medical attention for ongoing and progressively worsening low back pain on July 30, 1998. Her doctor believed the back pain was related to the claimant's weight problem and treatment was provided on that premise for several months.

On October 8, 1998, the claimant had an MRI which revealed the existence of broad-based posterior disc protrusions at L4-5 and L5-S1 consistent with disc herniations. The claimant discussed the results of the MRI with her doctor on October 15, 1998, and determined that her activities in shutting down the classroom could have caused the problem. The claimant testified that her doctor then took her off work for a week, through October 25, 1998. The claimant testified that when she returned to work on October 26, 1998, she reported a work-related injury to the self-insured, by reporting the injury to the school principal. The self-insured presented evidence that the injury was not reported until December 1, 1998.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, as there were here, the hearing officer must resolve those conflicts and determine what facts the evidence has established. The hearing officer determined that the claimant's

injury was not incurred on _____, but at some other time; that the claimant related the injury to her employment on October 15, 1998, but did not report the injury until December 1, 1998; and that the claimant's inability to obtain and retain employment was not a result of an injury incurred in the course and scope of her employment. The hearing officer's determinations are supported by the evidence, although other inferences could have also been drawn from the evidence presented. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We do not find that such is the case here.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge